

MEMO ENDORSED



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
PROBATION OFFICE
Early Termination Application

Name Danny Davila Lawyer Danny
Attorney Steven Feldman Phone number (212) 880-3488 (914) 843-7784
Judge Kenneth M. Karas

Start of Supervision Click here to enter a date. January 2, 2020

Maximum Expiration Date Click here to enter a date.

Reason for Early Termination Request

☒ Medical ☐ Relocation ☒ Exemplary Behavior ☒ Interest of Justice
☒ Other terrible living conditions at the shelter. Business in a foreign country.

Please explain why you are deserving of an Early Termination. You can attach your response or write in the space below.

I actually live at 25 Operations Drive, Valhalla, NY 10595
at the Grasslands Homeless Shelter also known as
the VOA (Volunteers of America), but I am using my
mothers home address as my mailing address.



SDNY

Early Termination Assessment Checklist

(For official use only)

NAME _____

PACTS#: _____

ONE YEAR COMPLETED ☐

PCRA: _____

RPI: _____

The Judicial Conference has endorsed nine non-binding criteria for assessing whether a releasee who satisfies the minimal statutory factors should be recommended for early termination.

- ☐ (1) stable community reintegration (e.g., residence, family, employment)
- ☐ (2) progressive strides toward supervision objectives and in compliance with all conditions of supervision
- ☐ (3) no aggravated role in the offense of conviction, particularly large drug or fraud offenses
- ☐ (4) no history of violence
- ☐ (5) no recent arrests or convictions
- ☐ (6) no recent evidence of alcohol or drug abuse
- ☐ (7) no recent psychiatric episodes
- ☐ (8) no identifiable risk to the safety of any identifiable victim
- ☐ (9) no identifiable risk to public safety

On Thursday January 2, 2020 I was released from prison, my first 1.5 days were spent sleeping and living outside in sub freezing temperatures. On the night of January 3, 2020 my chaplain picked me up off of the street and took me to sleep at my godmothers house in Stamford, CT, the following day he took me to a homeless shelter in Norwalk, CT, I spent two days there and since January 6, 2020 I've been in the Westchester County homeless system living at The Grasslands Homeless shelter, the reason for this is because while I am on probation I can't live with my mother because she lives across the street from an elementary school.

Since then I have been living with very violent, hostile people that are always harassing me and keep my stress and anxiety level at sky high levels. I'm always on edge at the shelter, always afraid that someone is going to do something violent to me. People here frequently pick fights with me, the 2nd week I was here the police were called because one of my roommates walked right up to my bed ready to fight me and followed me, he almost went to jail, I've lived in eight different rooms and have been moved seven times often because of violent roommates that were picking fights with me. One roommate came into our room and swung his backpack hitting my bed post twice, I confronted him about it and he proceeded to follow me around the shelter threatening me in front of staff that didn't do anything about it, he even followed me to the bathrooms shower stall to threaten me as I was getting ready to take a shower another different roommate did the same thing and invaded my personal space by touching me because I asked him if he was talking to me, every time I came within a hair of getting swung at.

Almost every room that I lived at I had to deal with severe noise and discomfort. One room I lived at I was only able to get two hours of sleep at night because guys were up all night talking on speaker phone, listening to music and watching movies out loud. In this room I got threatened by a guy that lived there and I was always on edge afraid that they would do something to me, they would throw trash around and on my bed and rub their body parts on my towel which I could no longer use until I did the laundry again.

In another room that I lived at one very violent client that was after me would constantly walk in and out of the door that would make noise all day long, he would also constantly lock and unlock his locker go into his locker and slam things on his locker and on the shelves all day long, waking me up and keeping me awake all day long as I tried to sleep.

In the current room that I live at there are four guys including me, two talk and two don't, the two that talk don't let me sleep during the day, their phones and loud annoying ring tones are constantly ringing, they talk loud and one guy named Jose that talks all day and night has the most annoying, anxiety producing whiny voice that it should be outlawed for him to speak. Although I could count them on one hand I had other roommates that were not like this, they would stay in the room all day and I wouldn't even know it, they would allow me to

sleep and feel calm and comfortable in my room.

I also frequently, sometimes on a constant basis am harassed by people at the shelter wherever I go, I'm always getting bullied, there's one bully that kicked a chair at me while I was sitting on the ground, I wrote a grievance against him, but the staff did nothing about it and the few times that I did have a good roommate I still couldn't sleep or feel comfortable in my room because people in the hallway would scream, yell and talk loud all day, everyday has been an incredible struggle to find sleep and comfort in the shelter, because of all of this tremendous trauma that I receive I suffer from anticipatory anxiety, I get tremendous anxiety and discomfort before I ever walk anywhere because I am always expecting some anxiety producing event. In short to sum it up my situation living at the shelter is nothing short of hell and I struggle to explain to you in words how terrible it truly is, there's so much more, but I could write a book, I am suffering greatly and I am writing you this paper in hope that you can feel some compassion for me and help to alleviate me from this hell on earth.

On August 25, 2020 I was given a sex offender number and as a result enrolled in the WESTCOP program, prior to this date I was allowed to freely come and go from the shelter, now I can only leave with written permission which I do roughly just once a week to refuel my car.

My days are spent attempting to sleep or at least lying in bed until 5:20 pm, at 5:25 pm I go downstairs to wait for them to open the cafeteria doors to eat dinner, from 5:45 pm to midnight I stay inside of my car listening to music in the shelter parking lot just to repeat the same thing all over again, that's all I do everyday, I can't do anything with my life on probation. More recently I have just been staying at the shelter all day and night.

I need to get on with my life and being on probation I can't do that. Before I got arrested I was an over the road truck driver and professional gambler, I would drive cross country, but on probation I can't do that I can't really do anything, the only type of job that I can do that I can get would be food delivery, but probation won't allow me to be a food delivery guy. Not being on probation will allow all of these ridiculous rules to go away and I can come and go as I please and I can travel frequently within the country and outside of the country as I have been used to, I am not used to living a sedentary life. While on probation I can't do the livelihood that I was used to doing, I can't make a living gambling and if gambling didn't work out I could always rely on getting a job truck driving, but while on probation I can't do either, I can't make any money, being disabled those are the only two type of jobs that I can do, I can sit at a chair all day putting chips on a table or I can sit in a truck all day driving it.

I suffer from severe stress and anxiety and I have sleep problems that don't allow me to fall asleep until 4am or later usually, I see a doctor mandated by probation and he prescribes me sleep medication, I get too much anxiety and boredom being awake all day, there's nothing

to do that I try to sleep it off all day to get through my day easier and faster. It's difficult to be awake to the reality of my situation.

I wish you could understand how difficult and rough my life is living at the shelter. I'm barely hanging on, it's such a struggle to make it from one day to then next and I am overwhelmed at the thought that I have to continue to live this way for another four years if my probation doesn't get terminated and my little dog that I love so much would have died and I would not have been able to be there for him in his final years.

Back in the summer my lawyer told me to reach out to him in the fall about him writing a motion for early termination. He said if probation gave him a positive report that he would "probably" write a motion to you for early termination and if it was negative that he probably would not. I reached out to him in October and in November he had a phone meeting with Hillel Greene my probation officer. I was shocked after I got the news because probation I think was unjust in their evaluation of me, they unfairly gave a negative report because I don't work, in January of 2020 Hillel excused me from working because of my severe heart and breathing problems, several months later in June I was given social security disability benefits because I was deemed disabled by the government, if I was supposed to work and I didn't seek a job I probably would have gone in front of you already for a violation of probation, another reason was because I did not join a program. In March of 2020 I drove to St. Vincent's Hospital in Harrison with my probation officer because he was going to force me to join a Monday - Friday program which is not a condition of my probation, intake at the hospital felt that I didn't qualify for any programs so they rejected me. A third reason is because I don't volunteer which is also not a condition of my probation. I then told my lawyer over the phone that I volunteered for the Port Chester Census Committee from February to October, when I told this to my lawyer he blew it off as nothing, I came to the conclusion that there isn't anything that I could do to satisfy my lawyer and probation, even if I did everything they told me that I would need to do to have a shot at ending my probation early they still would not be satisfied, there is nothing that I can do to satisfy them, they are always wanting more. So the three reasons why I got a negative report is because I don't work, I am not in a program and because I don't volunteer, neither of these three conditions are requirements of my probation, the working condition is a requirement, but I was excused from working.

In November I had a telephone meeting with my lawyer and Hillel Greene and my lawyer ended it with if I want to continue to do what I am doing that I can expect my supervision to be terminated in little more than four years, but if I want it to be terminated early and have him write the motion for me I have to be a super star of probation, they told me that you are a difficult judge and that it's very rare that you grant an early termination. A week later my lawyer emailed me this form (that I am mailing you) for early termination so that I can

see what the court says it takes for someone to meet the conditions of early termination. After reading it over I saw that I was lied to by my lawyer and probation officer because they held me at a higher bar, at a higher expectation than was necessary, they told me that in order to qualify for early termination of supervision that I had to go above and beyond of what is required of me, that I have to be this super star, this olympic champion of supervision for them to help me. What I read is the complete opposite of what I was told and it's not like I wasn't going above and beyond, I volunteered for the Port Chester Census Committee in February in subfreezing temperatures, with my hands frozen I went around town taping census posters on businesses. After reading this packet that my lawyer sent me through email I realized that if they were not willing to help me, that if they would not help me I had to help myself.

Under statutory regulations in this packet, section 2 says that the "Administrative Office of the U.S. Courts wrote in a May 12, 2009 memorandum that 3583(e)(1) does not require "exceptional conduct" to justify early termination." "Instead, a court must simply be satisfied that the termination is warranted and is in the interest of justice." When I read this I was given a huge glimmer of hope and was inspired to write this letter to you in hopes that I would get the surprise of my life in January 2021 when I would be told that my request of early termination was granted. Also the "Criminal Law Committee has directed early termination of supervision as something that is "recommended and favored" policy for appropriate probationers and supervised releasees."

"Exceptional conduct" is not necessary for early termination, I do not have to go above and beyond and be this olympic champion and super star of probation as my lawyer and probation told me that I had to be and on top of that the Criminal Law Committee has recommended that judges give an early termination of probation when appropriate, they said that it is "recommended and favored" over keeping someone on probation.

My lawyer also told me that because probation was not on board with an early termination that my chances at early termination would be close to zero and as a result he did not want to waste your time and look bad in front of you by writing a motion of early termination because judges usually sway to the side of whatever probation recommends. I've followed and exceeded every condition of my supervision and I think that anyone that does that is doing an excellent job, I think that my conduct has been exceptional given my circumstances, most people in my position would have been in jail already given how many people at the shelter pick on me, harass me and pick fights with me, if I didn't do well like probation says that I have been doing I probably would have gone in front of you to have a violation of probation hearing. I would like to reiterate again that to probation just doing the requirements of probation is not enough and is seen as not doing a good job on probation, which I disagree with.

If you reach out to probation and they give you a negative report please clarify with them that I have satisfied all the requirements of my probation because like I said someone can do everything they're supposed to be doing yet probation says that they are not doing a good job.

I am forced to see a sex therapist and psychiatrist once a week and in the beginning my sex therapist told me and complemented me because I always show up to her meetings and am always on time, she told me that most people miss sessions from time to time and are late, probation doesn't appreciate this.

I saw on wikipedia that you're from Colorado Springs, Colorado, I was surprised, I thought that you were from this area, that reminds me of the summer of 2014 when on a whim I took a road trip out to Colorado Springs, but I spent most of my time at Manitou Springs and in Mount Antero near Salida, Colorado, I was out there hunting for quartz and gem stones, eventually I drove all over the southwest. I liked to live a life of adventure and frequent travel which is what I am used to, I could never do something like that while on probation.

Another reason I would like my probation terminated early is because my little dog Coby is getting old and he only has a few more years to live and I want to enjoy the last years that he has left with him and I can't do that while I'm on probation because I can't live with my mother until my probation is over. I am very sad over this. Whenever I would walk through the house I would see him and he would make me laugh and smile, I would always give him a lot of affection.

The judicial conference has endorsed nine non-binding criteria for assessing whether a releasee who satisfies the minimal statutory factors should be recommended for early termination. I had a glimmer of hope because after reading this form I saw that I satisfy all nine factors.

1. Stable community reintegration (e.g., residence, family and employment)

I satisfy all examples of this first factor because it is not my fault that I am homeless, I have done everything that I can to get housing, most people don't answer me, some people answer at least once and then stop answering and the few that answer me all of the way I end up looking at their room for rent and they don't select me after running a background check. I spent months looking on airbnb as well, finally in late November I was ready to book a room one month at a time and an hour after I paid for it with my debit card I received an email telling me that my account was disabled, my reservation cancelled and my funds refunded to me because they ran a background check on me and it turned out that I am a sex offender, they do the same thing on sites renting out rooms and apartments, I have looked at well over 100 rooms and apartments and like I said the few people that do answer me to the end and show

me the room end up not choosing me after running a background check, I guess that they expect anyone with a criminal record or with a sex offense to live in a homeless shelter for the rest of their lives. I am not a lawyer, but this seems like discrimination, so as far as residence goes I am doing everything that I can possibly do given what I know to find a place to live at, it is not my fault that I don't have an apartment and as a result should not be penalized in this evaluation for not having a place to live. If someone is doing everything they can to find housing they shouldn't be penalized because no one wants to give them an opportunity and they're being unjustly discriminated against.

The second example mentions family, I have my mother, godmother and chaplain that I talk to everyday and support me.

The third example is employment, as I mentioned earlier I was excused by my probation officer from working because of my health problems I was also deemed physically and mentally disabled by the government because I receive social security disability benefits, the only three jobs that I can do which are gambling, truck driving or doing delivery work either I am not able to do them because I am on probation or I am not allowed to do by my probation officer. Therefore I should not be penalized for not satisfying the requirement of employment when I am not required to work by probation and I was determined to be disabled by the U.S. government.

2. Progressive strides toward supervision objectives and in compliance with all conditions of supervision;

I have completed all strides of my supervision objectives and I am in compliance with all conditions of my supervision if I wasn't I would have already gone in front of you for violation of probation. I don't do drugs, I don't talk to people under the age of 18, I don't look at pornography, I don't associate with people with a criminal record, I have gone to every sex therapist and psychiatric meeting and I have completed any other requirement that I may have forgotten.

3. No aggravated role in the offense of conviction, particularly large drug or fraud offenses;

I didn't have an aggravated role in my conviction because I am not a leader or organizer of my crime so this section does not apply to me.

4. No history of violence (e.g. sexually assaultive, predatory behavior, or domestic violence);

This section also does not apply to me because I have not been sexually assaultive, I have not shown predatory behavior or have committed any domestic violence.

5. No recent arrests or convictions (including unresolved pending charges) or ongoing,

uninterrupted patterns of criminal conduct;

I don't have any recent arrest, my last arrest was by the FBI on June 8, 2017 close to four years ago, I don't have any pending charges either and I don't have any patterns of criminal conduct. This section does not apply to me.

6. No recent evidence of alcohol or drug abuse;

Not only don't I have any recent evidence of alcohol or drug abuse I don't have any history of either, this section also does not apply to me.

7. No recent psychiatric episodes;

I have not had any recent psychiatric episodes. This section doesn't apply to me.

8. No identifiable risk to the safety of any identifiable victim; and

There isn't any identifiable risk that I pose to my victim, they are all the way in Cambodia and I don't have any idea where they live, I would never bother them or talk to them again.

9. No identifiable risk to public safety based on the Risk Assessment.

Although I did not run a risk assessment of myself I don't believe that I am any risk at all to public safety, I'm a great person, I wouldn't ever be a danger to anyone.

I would like to end this letter by mentioning that I need to get on with my life and I would like to go back to how my life was before I got arrested which was living at home with my mom and my little dog that I need and miss so much, while on probation I can't do any of those things and I'm just stuck at the shelter living with very loud, hostile rude people that harass me all day long.

Another reason why I ask that my supervision get terminated early is because I own a restaurant in Cambodia and the other owners are cheating me of all earnings and they are also ~~was~~ as a result mismanaging the business, I need to go there to tend to my business.

Please Judge Karas grant my early termination of probation, my poor mother is 72, both my mother and my dog are getting old and I want to enjoy their last years with them. I want to go back home with my mother, I really need them, I need my home, I've lived there since 1986, also until my probation is over I don't have any prospects of getting away from this place and away from these hostile hoodlums and thugs. I also can't work and save up money and get on with my life because I can't truck drive, gamble or deliver food while on probation, I can't continue to live this way, my life is too unbearable, you have the power to end my misery and drastically change my life for the better, please give me a second chance, a second chance at my life, I made a big mistake, but I really am a great guy, I promise that I won't make you look bad by getting in trouble again, no police force will ever hear from Danny Danila again. Please help me, please help me get back to the comfort of my home, back home with my mother and my dog.



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
PROBATION OFFICE**

EARLY TERMINATION FROM SUPERVISION

Statutory regulations

1. Probation {18 USC 3564(c)} - "The Court, after considering the facts set forth in Section 3553(a) to the extent that they are applicable, may, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, terminate a term of probation previously ordered and discharge the defendant at any time in the case of a misdemeanor, or an infraction or at any time after the expiration of one year of probation in the case of a felony, if it is satisfied that such action is warranted by the conduct of the defendant in the interest of justice."
2. Supervised Release {18 USC 3583(e)(1)} - "The court may: terminate a term of supervised release and discharge the person released at any time after the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to modification of probation, if it is satisfied that such action is warranted by the conduct of the person released and the interest of justice..."

Moreover, this reading of the statute is consistent with the policy of the Judicial Conference Criminal Law Committee and the Administrative Office of the U.S. Courts (AO), which in a May 12, 2009 memorandum, wrote that 3583(e)(1) does not require "exceptional conduct" to justify early termination. Instead, a court must simply be satisfied that the termination is warranted and is in the interest of justice. The Judicial Conference has endorsed nine non-binding criteria for assessing whether a releasee who satisfies the minimal statutory factors should be recommended for early termination. Lastly, the policy which influences early termination results from directives from the Judicial Conference and the AO. In this regard, the Criminal Law Committee has directed early termination of supervision as "recommended and favored" policy for appropriate probationers and supervised releasees.

3. Parole/Mandatory Release/Special Parole Term [U.S. Parole Commission Rules and Procedures Manual Section 2.43] "Upon its own motion or upon request of the parolee, the Commission may terminate supervision, and thus jurisdiction, over a parolee prior to the expiration of his/her maximum sentence."

Criteria

The appropriateness of early termination should be based on the releasee's compliance with all conditions of supervision and overall progress in meeting supervision objectives or making progressive strides toward supervision objectives specific to the releasee that exhibit stable community reintegration (e.g., residence, family, employment, health, social networks) during the period of supervision and beyond. These objectives should be detailed in the supervision plan which should include an evolving, individualized outcome-based plan of action.

According to Monograph 109 § 380.10:

Under 18 U.S.C. §§ 3564(c) and 3583(e)(1), the court may terminate terms of probation in misdemeanor cases at any time and terms of supervised release or probation in felony cases after the expiration of one year of supervision if satisfied that such action is warranted by the conduct of a releasee and is in the interest of justice. (Note: Early termination of parole cases is governed by the United States Parole Commission Rules and Procedures Manual, section 2.43.)

Officers should consider the suitability of early termination for releasees as soon as they are statutorily eligible. The general criteria for assessing whether a statutorily eligible releasee should be recommended to the court as an appropriate candidate for early termination are as follows:

1. Stable community reintegration (e.g., residence, family, and employment);
2. Progressive strides toward supervision objectives and in compliance with all conditions of supervision;
3. No aggravated role in the offense of conviction, particularly large drug or fraud offenses;
4. No history of violence (e.g., sexually assaultive, predatory behavior, or domestic violence);
5. No recent arrests or convictions (including unresolved pending charges) or ongoing, uninterrupted patterns of criminal conduct;
6. No recent evidence of alcohol or drug abuse;
7. No recent psychiatric episodes;
8. No identifiable risk to the safety of any identifiable victim; and
9. No identifiable risk to public safety based on the Risk Assessment.

The existence of an outstanding financial penalty, per se does not adversely affect early termination eligibility as long as the releasee has been paying in accordance with the payment plan.

Once the above is demonstrated, the following considerations must also be made:

1. A releasee must demonstrate a minimum of 12 months sobriety and successful participation or completion of substance abuse treatment, if required.
2. A releasee must have demonstrated mental and emotional stability, and has complied with mental health treatment, if required.
3. A releasee must have demonstrated compliance with payment schedules regarding all court ordered financial penalties, including fines, restitution and special assessments and have a payment satisfaction plan in place with the Financial Litigation Unit (FLU) of the U.S. Attorney's office.
4. A releasee must not pose a threat to the community (e.g., sexually assaultive, or other predatory behavior)

Early Discharge Procedure

1. Conduct a criminal record check on the releasee.
2. Case should be staffed with the supervisor to deem appropriateness of early termination.
3. Upon receiving approval from a SUSPO, Officers should prepare the Court petition (Probation form 12B) to include a summary of the releasee's adjustment under supervision, along with justification for the request for early termination which is supported by the chronological record and supervision case plan. In addition, the report should cite 18 USC 3583(e) and the most recent PCRA results:

As an example:

In July of 2016, a Post Conviction Risk Assessment was completed. The releasee scored Low. "In this category, 8% of releasees have their supervision revoked and 9% are rearrested within 191 to 497 days from their initial assessment. Intensive interventions with this population have little impact and may increase the risk of recidivism. Typically, a low level of supervision is appropriate; consider low intensity supervision and eventual early termination."

4. Notify the U.S. Attorney's office (USAO) of our intent to request early termination for releasee **prior to submitting the request to the Court**. The unsigned petition should be submitted to the U.S. Attorney's Office via email along with NY Form 435. Give the USAO 10 business days to respond. If no response is

received after 10 business days from the date of the written notification, contact the Chief of the criminal division of the U.S. Attorney's office for assistance. Amend Probation form 12B to include the position of the USAO.

5. Submit Probation Form 35 and Probation form 12B. The Judge will sign the form if he/she approves of the discharge.

Parole/M.R./ SPT cases

Refer to the Early Termination section of the U.S. Parole Commission Rules and procedures Manual, section 2.43.

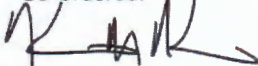
1. As noted on Parole Form F-3, persons under supervision in this category are eligible for early termination at certain stages of their supervision term. For instance, those releasees whose salient factor score is either 8, 9, or 10 are eligible for discharge at the conclusion of 24 months. Those releasees with lower salient factor scores become eligible for early discharge consideration after 36 months of supervision.
2. Follow eligibility criteria as outlined for probation and supervised release cases.

Application for Early Termination of Supervision

The attached Application for Early Termination of Supervision form was developed in order to help releasees understand the eligibility requirements for early termination, as well as to better organize their arguments in support of their early termination of supervision. The form will also serve to provide officers with specific, meaningful information by which to formulate recommendations regarding the applicants' early termination requests.

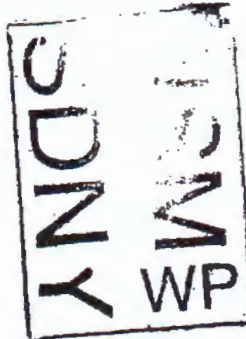
Application for early termination of supervised release is denied. Mr. Davila has served far less than half of his term. While his compliance with the conditions is admirable, this is to be expected and not extraordinary. Moreover, while Mr. Davila does appear to be facing certain challenges in finding a suitable place to live and work, this does not justify early release. Mr. Davila was convicted of serious crimes and the supervised release component was a major factor in the sentence that the Court imposed. This denial is without prejudice should circumstances materially change.

So Ordered.



6/4/21

Danny Davila
135 Rectory Street
Port Chester, NY 10573



United States District Court
United States Courthouse
The Honorable Kenneth M. Karas
300 Quarropas Street, Chambers 533
White Plains, NY 10601-4150

